IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 1056 OF 2006

V. Sudhir Kumar .... Petitioner

versus

The General Secretary,
Keraleeya Samajam & ors..... Respondent.

Ms. Ushaji Peri i/b. Mihir Desai for the petitioner
Mr. P.K.Rele Sr. advocate with Rahul D.Pak &
M.V.Joglekar for the Respondent no.1.
Shri R.M.Patne AGP for Respondents 4 to 8.

CORAM; A.P. DESHPANDE, J.
DATED; 15TH FEBRUARY, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. This petition is directed against an order passed by the University and College Tribunal rejecting the application moved by the petitioner/appellant seeking condonation of delay of three months in filing appeal.

3. The petitioner was initially appointed as a clerk on 18-5-1990 in the respondent no.2 college, which is administered and managed by respondent no.1 society. The petitioner came to be promoted to the post of Head clerk on 1-2-1996. On 7th April 2003 petitioner submitted an apology letter and a resignation letter

to the respondent and the same came to be accepted on that very day sevearing the relationship of employer and employee. In this facts situation the petitioner filed an appeal contending that the said apology letter and the resignation letter was obtained under coercion by the college management when the petitioner was wrongfully confined in the college premises. It is the case of the petitioner that he was persuading the respondent to permit him to resume the duties. But as the said request was not granted, he had to consult the employee's union and the advocate for further steps to be taken in the matter. The petitioner further contends that in the process, the appeal was filed beyond the period of limitation and the delay was three months in filing of the appeal.

4. Along with the appeal the petitioner did file an application for condonation of delay. But the said application did not even spell out the reason for the delay. The application was very cryptic. It appears that the tribunal pointed out the deficiency in the application and hence another application was filed yet again, for condonation of delay. As the second application was also not proper, a third application came to be filed. Perusal of the said applications moved by the petitioner repeatedly, seeking condonation of delay, clearly reveal that the petitioner did not have proper legal assistance, which

has resulted in miscarriage of justice in as much as the cause of the petitioner stands defeated by rejection of the condonation of delay application. Even the tribunal while considering the matter touching the condonation of delay, has observed in para 9 of the order, as follows:

> "A bare perusal of all the three applications for condonation of delay makes it clear that they were drafted and filed in ignorance of the statutory provisions."

The Presiding Officer of the College Tribunal after going through the legal position has rejected the application and hence this writ petition.

5. The learned counsel for the petitioner has submitted that the courts and the tribunal while considering the application for condonation of delay need to pragmatic and not pedemic in its approach. The endeavour need to be to decide the matter and not to nonsuit the person on the ground of delay, more so when the same is hardly of three months and the limitation is only one month. Letter of the law has to be applied in the meaningful manner to meet the ends of justice. I have no iota of doubt that the impugned order results in miscarriage of justice as the petitioner's cause stands defeated on the ground

of delay. More so, when the petitioner while approaching the tribunal did not have proper legal assistance. In this facts situation, I am constrained to interfere with the order impugned in this petition, solely with a view to advance the cause of justice.

6. In the result, the writ petition is allowed. Impugned order passed by the College Tribunal is quashed and set aside. Applications filed by the petitioner for condonation of delay before the Tribunal stand allowed. The Tribunal shall proceed to decide the appeal on merit in accordance with the law.

Rule made absolute in the above terms.

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